Jetha Ram

Vs

The State of Rajasthan

Criminal Appeal No. 118 of 1973

(R. S. Sarkaria, P. S. Kailasam JJ)

21.07.1978

JUDGMENT

KAILASAM, J. -

1. This appeal is preferred by Jetharam against the judgment of the Rajasthan High Court allowing the appeal by the State against his acquittal by the Sessions Court and convicting him under Section 302, I.P.C. and sentencing him to imprisonment for life.

2. The short facts of the case, as spoken by PW 1, the main eye witness is that Jetha Ram, the appellant before us was having a flock of sheep in the village Barasinghsar. There was accute shortage of water and therefore the villagers protested against the appellant keeping a large flock when there was not even enough drinking water in the village. Because of the villager's protest, Jetharam removed his flock to the adjoining villages but ultimately came back to the village and about two days before the occurrence PW 1, Jagannath had his turn to take water from the well in the village. The appellant Jetharam brought the flock to the well and began watering them. PW 1, Jagannath protested but Jetha replied that he would settle the matter on Holi and went away with the flock. On the full moon day (two days later) the villagers gathered at Ger Ki Gwar for celebration of Holi. They burnt Holi and when the villagers were enjoying the festival, some of them playing Kabaddi at about 10.00 p.m. the appellant Jetha fired a gun from the roof of the Govinda Sunar's shop. There were about 300-400 villagers assembled there at that place. As soon as the first gun shot was fired, one of the persons sitting at the Gwar raised a cry. A minute or two later another gunshot was heard. After hearing the second gunshot, people started running. PW 1 went to the house of Sarpanch and asked him to report the matter to the police. As Bega Ram, Sarpanch was ill, he directed PW 1 to go to the Railway Station and send a telegram. Immediately PW 1 went to the Station and dispatched a telegram to the Superintendent of Police, Bikaner. In the telegram PW 1 stated as follows :

> Jetharam son of Purkharam started firing at Barasinghsar. Seven person got bullet shots. Great danger of life to other. Arrange for safety immediately.

3. After dispatching the telegram PW 1 returned to the village and went to the Gwar and found other witnesses. He found six persons lying dead and 12 others injured by gunshot injuries. At about 3 or 4 a.m. on the same night the Sub-Inspector arrived in the village and inspected the dead bodies and examined the injured persons.

4. The prosecution examined as many as 13 eye-witnesses of whom 10 PWs 4, 5 and 11 to 18 had received gunshot injuries.

5. During the course of investigation and at the time of the evidence, the witnesses stated that they saw apart from Jetharam, eight other accused. In the course of the testimony they spoke about the presence of the other accused on the roof of the house from which Jetharam fired these shots.

6. The learned trial Judge who tried the case acquitted all the accused. He acquitted the accused other than Jetharam on the ground that the evidence relating to conspiracy was not acceptable and that their names were not mentioned in the telegram.

7. The State preferred an appeal to the High Court of Rajasthan against the acquittal of the accused. The High Court confirmed the acquittal of other accused but set aside the acquittal of Jetharam and found him guilty under Section 302, I.P.C. and sentenced him for life imprisonment.

8. The High Court in its judgment has found that the evidence of the eye-witnesses are clinching and that there are no grounds for disbelieving their testimony. It also referred to the fact that immediately after the occurrence PW 1 went to the Sarpanch and finding that he was ill went to the Railway Station and dispatched a telegram with utmost expedition. In that telegram the witness PW 1 had reported for Jetharam who fired the gun. Whatever conclusion that may be arrived at regarding other accused whose names were not mentioned at the earlier stage, there could be no difficulty in holding Jetharam as the assailant and accepting the testimony of the eye-witnesses to that extent.

9. We have gone through the testimony of eyewitnesses and we do not find any discrepancy or defect which would justify our rejecting their testimony. We find that the testimony of the eye-witnesses relating to the appellant was available at the earlier opportunity and all the witnesses were unanimous that they saw the accused firing the gun. The only point which needs some scrutiny is about the identification of the assailant. It was a night and the time was at 10.00 p.m. The evidence is uniform that it was Poornima day i.e. full moon day. The distance, from which according to PW 1 the gunshot was fired was 36' from the roof which was at the height of 15'. Although there is some evidence that because of the presence of the crowd and the Kabaddi game there was some dust, there is no material for coming to the conclusion that the visibility was hampered because of the game and the crowd. In fact as observed by the High Court no suggestion was made to the witness that there was such dust that the witness could not have seen from the distance of 36'. We find that after one or two firings the crowd started running and some them ran towards the shop from which firing was taking place. While running towards shop from where gunshots were fired, subsequent shots might have been fired at a closed distance. Some of the injuries and the post-mortem certificate reveal that the shots might have been fired from closer range.

10. We have no hesitation in holding that the eye-witnesses had ample opportunity in identifying the assailant. The High Court has elaborately considered the reasons given by the SEssion Court and found that the reasonings given are unacceptable. The various reasons given are found in the High Court's judgment from pp. 179 to 183 of the paper-book. We have been taken through the reasons given by the High Court for not accepting the conclusion arrived at by the trial Court and we agree with the High Court. To illustrate the approach of the learned trial Judge we would mention a few instances. The trial Judge found that the witnesses had not seen the accused going to the roof's top or getting down therefrom and therefore rejected their testimony that they saw the appellant on the roof. This reasoning is unsound and the High Court rightly declined to accept it. Regarding visibility the trial Court was of the view that there must have been dust particularly in the atmosphere which might have affected visibility. Declining to accept the reasoning, the High Court pointed out that the distance from which shots were fired was only 38' and from a height of 10' and

that there was broad moonlight and pointed out that it is no-body's case that the atmosphere became so hazy so as to impair the visibility to the extent that the witnesses could not have identified the assailant on the roof of Govinda Sunar's shop. No such suggestion was, in fact, made to any of the witnesses. Further, the High Court correctly noted that the height of the roof was ten feet and therefore atmosphere at that height must be clearer than the atmosphere on the ground and there could be no obstruction to the visibility.

11. The High Court also rightly rejected the view of the trial Court that as the evidence regarding other accused were not accepted and the case of the conspiracy set up by the prosecution rejected, the evidence regarding the appellant cannot be accepted. The learned counsel for the appellant submitted that the evidence of PWs 11 and 18 would indicate that they heard the name of the appellant being mentioned as one of the assailants at the time of the occurrence and repeated those names without actually seeing them. On a reading of the evidence, we are unable to accept the contention put forward by the learned counsel for the appellant. It appears that the witnesses stated that they not only saw but also relied on the version given by the other witnesses. It may also be noted that even taking that the witnesses relied on the version given by the person at the scene immediately after the occurrence it is admissible as a relevant fact under the Evidence Act.

12. It was lastly contended by the learned counsel for the appellant that when the trial Court took one view and the High Court another it is not sufficient for setting aside the order of acquittal. We are unable to accept this contention, for we find that the reasons given by the trial Court for acquitting the accused are totally unsustainable.

13. In the result, we agree with the conclusion arrived at by the High Court and setting aside the acquittal by the trial Court. We confirm the conviction of the appellant under Section 302, I.P.C. and sentence him to imprisonment for life.

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